

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al.,)	
)	
Plaintiffs,)	CA No. 1:17cv02989-AT
)	
v.)	
)	
BRIAN KEMP, et al.,)	
)	
<u>Defendants.</u>)	

**JOINT NOTICE IN RESPONSE TO
THIS COURT’S ORDER (DOC. 5)**

Come Now the undersigned counsel, in response to this Court’s August 14, 2017 Order requiring counsel to confer regarding Plaintiffs’ Expedited Motion for Limited Early and Expedited Discovery, and state that after conferring counsel could not agree on early/expedited discovery. Specifically, the State Defendants maintain that after raising both Eleventh Amendment and sovereign immunity in their motion to dismiss, any requirement that they participate in discovery would amount to a denial of those immunities. *Howe v. City of Enterprise*, 861 F.3d 1300, 2017 U.S. App. LEXIS 12038 *6 (11th Cir. 2017) (holding that “requiring the parties to develop their Rule 26(f) report before the court ruled on the immunity defenses is [] inconsistent with . . . decisions which establish that immunity is a right not to be subjected to litigation beyond the point at which immunity is asserted.”); *Bouchard Transp. Co. v. Fla. Dep’t of Env’tl. Prot.*, 91

F.3d 1445 (11th Cir. 1996). The County Defendants intend to file motions to dismiss based on applicable immunities and therefore early or expedited discovery as to these defendants would likewise amount to a denial of their respective immunities.¹

Plaintiffs maintain that any Eleventh Amendment or sovereign immunity issues in this action have been addressed by Plaintiffs' pending Motion for Leave to File Amended Complaint ("Motion"). Plaintiffs filed the Motion on August 4, 2017 in Fulton County Superior Court prior to removal, seeking expedited consideration without need for further briefing given the pending election contest. After removal of this action, on August 15, 2017, Plaintiffs reasserted the Motion before this Court pursuant to Local Rule 7.2(A) via their Memorandum in support of the Motion. Defendants have filed no opposition.²

¹ As ordered by the Court (Doc. 5), Defendants will also file a response to Plaintiffs' request for expedited discovery (Doc. 4) on Monday, August 21, 2017.

² As ordered by the Court, before 5:00 p.m. on August 15, 2017, Plaintiffs confirmed, through counsel, that the members of the Cobb County Board of Elections and Registration ("Cobb Board") were served with the current motion (Doc. 4) and requested that Ms. Eveler (or counsel for the Cobb Board members) accept service on behalf of the Cobb Board members. Counsel for the Cobb Board informed Plaintiffs' counsel that all Board members have been served with process except Jessica Brooks, and that Ms. Eveler is not authorized to accept service of process for claims brought against Ms. Brooks in her individual capacity. Also, before 5:00 p.m. on August 15, 2017, Plaintiffs confirmed with Mark Wingate's counsel that he had notice of this action and came to an agreement for Mr. Wingate to accept service.

Respectfully submitted,

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